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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/857,084	05/31/2001	Jurgen Niessen	P01,0182	9132

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SCHIFF HARDIN, LLP  
PATENT DEPARTMENT  
6600 SEARS TOWER  
CHICAGO, IL 60606-6473

EXAMINER
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CORRIELUS, JEAN M

ART UNIT	PAPER NUMBER
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2172

DATE MAILED: 06/28/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/857,084

Applicant(s)

JURGEN NIESSEN ET AL.

Examiner

Jean M Corrielus

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 31 March 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-10 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

### DETAILED ACTION

1. This office action is in response to the amendment filed on March 31, 2004, in which claims 1-10 are presented for further examination.

#### *Response to Arguments*

2. Applicant's arguments with respect to claims 1-10 have been considered but are moot in view of the new ground(s) of rejection.

#### *Drawings*

3. Applicant is required to furnish the formal drawings in response to this office action. No new matter may be introduced in the required drawing. Failure to timely submit a drawing will result in **ABANDONMENT** of the application.

4. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the limitations from the claims must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes

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made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

***Claim Rejections - 35 USC § 112***

5. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

6. Claims 1-10 as best understood by the examiner are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. In claims 1 and 6 recite the steps of "storing in a database of said computer system... respective information which describes conditions under which said available..." and "utilizing said information, when a change in a state of a component....."; and claim 2, recites the steps of "marking..., component mappers for components..." and "utilizing said marked component mappers..., to assess whether said change in said availability...."; claim 3 recites the steps of "recording a respective current functional state of a computer system....."; "recording, by said database, for each computer system component, whether ..." and "assessing , when a change in a

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state of a component of said computer system...”; claims 4 and 8 recite the steps of “marking, using a stipulation regarding which system function is monitored...”; “marking, in addition, a respective state of said components of said computer system..”; and “assessing , when a change in a component state has taken place...”. These limitations of the claims are not supported by the specification. There is not description given in the specification showing how the recited steps of the claims is accomplished in order to enable one having ordinary skill in the art to make and use the invention. Applicants are advised to amend the specification or cancel the limitations from the claims. Applicants are reminded that no new matter should be added.

***Claim Rejections - 35 U.S.C. 102***

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

8. The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999

(AIPA) do not apply to the examination of this application as the application being examined

was not (1) filed on or after November 29, 2000, or (2) voluntarily published under 35 U.S.C.

122(b). Therefore, this application is examined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

9. Claims 1-10 as best understood by examiner are rejected under 35 U.S.C. 102(e) as being anticipated by Connelly et al., (hereinafter “Connelly”) US Patent no. 6594,786.

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As to claim 1, Connelly discloses a fault tolerant availability which includes agents, wherein the agents monitor availability with timestamp and report uptime and downtime events to a server, wherein agents on nodes of a cluster monitor cluster, node and package availability and cluster configuration changes and report these event to the server. In particular, Connelly discloses the claimed □ storing in a database of said computer system, for a system function monitored for availability, respective information which described conditions under which said availability of a system function are to be assessed as existing or no longer existing □ (col.3, lines 24-27; lines 40-43; col.4, lines 1-4, lines 61-67); and □ utilizing said information, when a change in a state of a component of said computer system has taken place, to assess whether said change that has taken place results, or said change that is intended to take place would result, in a change in terms of the availability of said system function □ detecting the change and the status that effects availability (col.3, lines 43-45; lines 50-56; col.4, lines 61-67).

As to claim 2, Connelly discloses the claimed □ marking in a database of said system, component mappers for components which contribute to said availability of said system function □ nodes, clusters and packages (software, or mapper) are collectively referred to as monitored entities (col.5, lines 9-10, lines 31-35; col.6, lines 14-21; lines 23-37); and □ utilizing said marked component mappers when a change in a state of a component has taken place or is intended to assess whether said change in state that has taken place results or said intended change in state would result in a change in said availability of said system function □ (col.3, lines 43-45; lines 50-56; col.4, lines 61-67; col.5, lines 9-10, lines 31-35; col.6, lines 14-21; lines 23-37).

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As to claim 3, Connelly discloses the claimed □recording a respective current functional state of a system component for said system component in the database□ (col.3, lines 43-45; lines 50-56; col.4, lines 61-67; col.5, lines 9-10, lines 31-35; col.6, lines 14-21; lines 23-37; col.7, lines 2-25); □recording by said database for each system component whether said component contributes to said availability of a system function monitored for availability, and if so for which system function or system functions said component contributes to said availability□ (col.3, lines 43-45; lines 50-56; col.4, lines 61-67; col.5, lines 9-10, lines 31-35; col.6, lines 14-21; lines 23-37; col.8, lines 28-45; col.8, line 55-col.9, line 35); and □assessing when a change in a state of a component of said system has taken place or is intended using data stored in said database for other system components to assess whether said availability of a system function monitored for availability changes or would change as a result of such a change□ (col.3, lines 43-45; lines 50-56; col.4, lines 61-67; col.5, lines 9-10, lines 31-35; col.6, lines 14-21; lines 23-37).

As to claim 4, Connelly discloses the claimed □marking using a stipulation regarding which system function is monitored for availability, among components of said system which are mapped in a database, those components which are necessary for said availability of said system function□ (col.3, lines 43-45; lines 50-56; col.4, lines 61-67; col.5, lines 9-10, lines 31-35; col.6, lines 14-21; lines 23-37; col.7, lines 2-25); □marking in addition a respective state of said components of said system which are mapped in the database for said components□ (col.3, lines 43-45; lines 50-56; col.4, lines 61-67; col.5, lines 9-10, lines 31-35; col.6, lines 14-21; lines 23-37; col.8, lines 28-45; col.8, line 55-col.9, line 35); and □assessing when a change in a component state has taken place or intended whether said change results or would result in a

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change in availability of said system function □ (col.3, lines 43-45; lines 50-56; col.4, lines 61-67; col.5, lines 9-10, lines 31-35; col.6, lines 14-21; lines 23-37).

As to claim 5, Connelly discloses the claimed □ storing by said database stores for each system function regarded as being relevant to availability information which describes conditions under which said availability of a system function is to be assessed as existing or no longer existing □ (col.3, lines 43-45; lines 50-56; col.4, lines 61-67; col.5, lines 9-10, lines 31-35; col.6, lines 14-21; lines 23-37; col.8, lines 28-45; col.8, line 55-col.9, line 35).

As to claims 6-10, the limitations of claims 6-10 have been noted in the rejection of claims 1-5 above. They are, therefore, rejected under the same rationale.

### *Conclusion*

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jean M. Corrielus whose telephone number is (703) 306-3035. The examiner can normally be reached on Monday - Friday (12:00pm - 7:30 pm).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John E Breene can be reached on (703) 305-9790. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.



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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Jean M. Corrielus

Patent Examiner

June 24, 2004